State of Connecticut

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Hartford
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Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: WT Docket No. 08-165

Dear Commissioners and Secretary of the Commission:

As the chief legal officer of the State of Connecticut, I am writing in opposition to the petition filed by CTIA -- The Wireless Association (CTIA), docketed as WT Docket No. 08-165. The CTIA's proposal to place arbitrary deadlines on state and local agencies to rule on wireless facility applications would violate the Telecommunications Act of 1996 (the Act) and is unjustified and unnecessary.

The CTIA's petition requests that this Commission interpret provisions of the Act that give state and local agencies a reasonable time to act on a wireless facility application. Specifically, the Act provides that "[a] State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a ***reasonable period of time*** after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request." 47 U.S.C. § 332(c)(7)(B)(ii) (emphasis added). The CTIA's petition asks this Commission to hold that a failure to act on a wireless facility siting application only involving collocation occurs if there is no final action within 45 days from the submission of the request to the state or local siting authority, and that a failure to act on any other wireless siting facility occurs if there is no final action within 75 days from submission of the request to the state or local siting authority. CTIA further asks that a failure to act shall be deemed to be an approval of the wireless siting request. (CTIA Petition, at 24-27, 38.)

The CTIA's proposal is plainly contrary to the Congress's intent in enacting the Telecommunications Act of 1996 (the Act). If Congress had wanted to impose specific deadlines on state and local siting or zoning agencies, it certainly could have. Instead, it purposely chose to respect state and local governments' exercise of their authority and required only that decisions be made in a reasonable time. This permits state and local agencies to take into consideration factors relevant to their jurisdictions in making these important decisions. To place them in a straightjacket of arbitrary deadlines would clearly distort and undermine Congress's judgment in enacting the reasonable time period requirement. The Commission should not create the deadlines the CTIA

proposes when Congress clearly chose to preserve a degree of flexibility and respect for state and local agencies.

Moreover, the CTIA's proposal would force state and local agencies to make hurried and hasty decisions on facility site applications that often require careful analysis and difficult assessments of environmental impacts and alternatives. Wireless facility siting requires consideration of a wide range of factors, including environmental effects, consistency with local land use regulations, impacts on nearby residential neighborhoods, the ability to minimize tower proliferation and to maximize collocation opportunities, the impairment of visual aesthetics, the mitigation of adverse effects, and the availability of potential alternative sites having fewer adverse effects. The Connecticut Siting Council, the state agency with jurisdiction over wireless facility siting in Connecticut, now has lengthy experience with such decisions -- experience showing that many siting applications require significantly longer periods of time than CTIA proposes. The Siting Council's record demonstrates that such time is vital to evaluate the varied and often conflicting factors and to make sound decisions in the public interest. The CTIA's proposal blithely ignores such experience of state and local agencies. Unconscionably, it would preclude those agencies from responsibly exercising their authority.

Finally, CTIA's request is simply unnecessary. The CTIA cites some extreme examples, most involving two years or more of delay. These extreme examples do not justify violating the intent of Congress or impairing the ability of state and local agencies from making sound siting decisions. Connecticut law, for instance, provides that the Siting Council must act on wireless tower facility applications within one hundred eighty (180) days after the filing of an application with a provision that "such time period may be extended by the council by not more than one hundred eighty days *with the consent of the applicant*." Conn. Gen. Stat. § 16-50p(a)(2) (emphasis added.) Under its statutory mandated process, the Siting Council brings the wireless siting process to local communities through evening hearings held in the municipality where the facility is to be located. Conn. Gen. Stat. § 16-50m (a). Municipal government agencies and other state agencies, as well as abutting landowners, receive notice and can become parties. In addition, environmental groups, neighborhood organizations, and members of the general public can become parties or intervenors. *See* Conn. Gen. Stat. § 16-50g, et seq.; Conn. Gen. Stat. § 4-177a. State judicial review is provided by Conn. Gen. Stat. § 16-50q and Conn. Gen. Stat. § 4-183. These statutory provisions ensure that in Connecticut no application by the wireless industry will languish due to inaction while enabling all stakeholders to participate in the process.

Connecticut's statutory time frames have never been challenged as unreasonable. The industry, at least in Connecticut, is hardly clamoring for shorter time frames that would force the Siting Council to make hasty decisions. Indeed, these time frames, which have existed for well over a decade in Connecticut, have proved to be highly workable and have effectively balanced the industry's interest in reasonably prompt application decisions with the public interest in sound siting decisions consistent with public safety and environmental protection.

Although other states do not follow Connecticut's model and its time frames, the courts are able to interpret the Act to prevent abuse. In *Masterpage Communications, Inc. v. Town of Olive*, 418 F.Supp. 2d 66 (N.D. N.Y. 2005), the Court held that a more than two-year moratorium constituted an unreasonable delay under the Act. *Id.*, at 78. In *Sprint Spectrum L.P. v. Town of Farmington*, 1997 U.S. Dist. LEXIS 15832, 3:97 CV 863(GLG), 1997 WL 631104 (D.Conn. 1997), the Court found illegal under the Act a 270 day moratorium prohibiting the plaintiff from constructing a telecommunications facility, or even submitting an application for approval. Thus, the courts have demonstrated an ability to provide a remedy when local agencies have engaged in unreasonable delay.

Although CTIA is apparently unsatisfied with such time frames, courts have effectively ruled against the unreasonably short periods it seeks. In *SNET Cellular, Inc. v. Angell*, 99 F.Supp. 2d 190 (D.R.I. 2000), the court rejected a claim that a 15-month delay was unreasonable. The court stated that "by requiring action within a reasonable period of time, Congress did not intend to create arbitrary time tables that force local authorities to make hasty and ill-considered decisions." *Id.*, at 198. The court further noted that the legislative history of the Act "makes it clear that 'it is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their request to any but the generally applicable time frames for zoning decision.' H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 208 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 223." *Id.* Similarly, in *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732 (C.D. Ill. 1997), the Court rejected a claim that a county board taking six months to decide the plaintiff's application was unreasonable under the Act. *Id.*, at 746.

Thus, courts have already found that the time frames adopted by Connecticut are reasonable under the Act. The arbitrary deadlines sought by CTIA are far shorter than time frames that courts have consistently concluded are well within the Act's reasonable time period requirement.

For the reasons so stated, the CTIA Petition should be rejected by the Commission.

Very truly yours,

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